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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,040	09/28/2001	Max L. Musser	BELL-0124/01118	4570
49584	7590	10/14/2008	EXAMINER	
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPokane, WA 99201			WOOD, WILLIAM H	
ART UNIT	PAPER NUMBER		2193	
MAIL DATE	DELIVERY MODE			
10/14/2008	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/966,040	<b>Applicant(s)</b> MUSSER ET AL.
	<b>Examiner</b> William H. Wood	<b>Art Unit</b> 2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 23 July 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,4-6,8,11-16 and 20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-2, 4-6, 8, 11-16 and 20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 1-2, 4-6, 8, 11-16 and 20 are pending and have been examined.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Marsh** et al. (US 2002/0073304 A1) in view of **Fletcher** et al. (USPN 6,009,274) in further view of **Ethridge** et al. (US 6,466,572 B1).

**Claim 1**

**Marsh** discloses a method for automated distribution of software comprising:

- (a) identifying a version of first software installed on the ONU (*figure 6; paragraph 0025*);
- (b) determining whether the version of the first software multiplexor is a first prescribed software version (*figure 6*);
- (c) if the version of the first software is not the prescribed software version, updating the first software to be the prescribed software version (*figure 6*);
- (d) identifying a version of second software installed on the OIU (*figures 5-6; paragraphs 0045, "to a plurality of networked computer systems"*);

- (e) determining whether the version of the further second software is a second prescribed software version (*figure 6*); and
- (f) if the version of the second software is not the second prescribed software version, updating the second software to be the second prescribed software version (*figure 6*);
- (g) identifying a version of third software installed on the further OIU (*figures 5-6; paragraphs 0045, "to a plurality of networked computer systems"*);
- (h) determining whether the version of the third software is a third prescribed software version (*figure 6*); and
- (i) if the version of the third software is not the third prescribed software version, updating the third software to be the third prescribed software version (*figure 6*).

**Marsh** did not explicitly state downloading the prescribed version only if the existing version is not the prescribed version. **Fletcher** demonstrated that it was known at the time of invention to only download updates when necessary, that is only if the existing version is not the prescribed version (column 4, lines 51-60; column 5, lines 53-61). **Marsh** demonstrated a system for the updating of firmware (paragraph 0001). It would have been obvious to one of ordinary skill in the art at the time of invention to implement the method for updating firmware in **Marsh** with sending updates only if they are needed, that is only if the existing version is not the prescribed version, as found in **Fletcher**'s teaching. This implementation would have been obvious because one of ordinary skill in the art

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would be motivated to reduce consumption of network resources (**Fletcher**: column 4, lines 51-60).

**Marsh** did not explicitly state the software distribution being on components of a fiber optic network configured as a host digital terminal (HDT) that includes at least one optical multiplexing unit (OMU) and at least one optical interface unit (OIU), and including at least one optical network unit (ONU) that includes at least one further OIU. **Ethridge** demonstrated such fiber optic networks were known at the time of invention (figure 4, elements 50, 62, 60 and 56; figure 5, elements 94, 90). It would have been obvious to one of ordinary skill in the art at the time of invention to implement the multiple computer/device upgrade system of **Marsh** in a multiple device fiber optic network environment of **Ethridge** as found in **Ethridge**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to provide secure upgrades to computer/device systems (**Marsh**: paragraph 0010).

#### Claim 2

**Marsh** and **Ethridge** disclose the computer readable media method of claim 1, further comprising instructions for contacting the HDT at least to identify the version of the first software and the version of the second (**Marsh**: figures 5-6; paragraphs 0045, "to a plurality of networked computer systems").

#### Claim 4

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**Marsh** and **Ethridge** disclose the computer readable media method of claim 1, further comprising instructions for determining whether the HDT includes at least a further OMU wherein identifying the software comprised on the firmware cards located in the multiplexor comprises identifying software comprised on an optical interface unit card (*Marsh: figures 5-6; paragraphs 0045, "to a plurality of networked computer systems"*).

Claim 5

**Marsh** and **Ethridge** disclose the computer readable media method of claim 4, further comprising instructions for:  
identifying a version of software installed on the further OMU;  
determining whether the version of the software installed on the further OMU is a prescribed software version; and  
if the version of the software installed on the further OMU is not the prescribed software version, updating the software installed on the further OMU to be the prescribed software version (*Marsh: figures 5-6; paragraphs 0045, "to a plurality of networked computer systems"*)

Claim 6

**Marsh** and **Ethridge** disclose the computer readable media method of claim 1, further comprising instructions for determining whether the HDT includes at least a further OIU (figure 4, elements 50, 62, 60 and 56; figure 5, elements 94,

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90).<sub>+</sub>

Claim 20

The limitations of claim 20 correspond to the limitations of claims 1-2 and 4-6 and are rejected in a corresponding manner.

Claims 8 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Marsh** et al. (US 2002/0073304 A1) in view of **Fletcher** et al. (USPN 6,009,274) in further view of **Ethridge** et al. (US 6,466,572 B1) in further view of **Northcutt** et al. (US 6,678,741 B1).

Claims 8 and 11-16

The limitations of claims 8 and 11-16 are similar to the limitations of claims 1-2 and 4-6 and are rejected in a similar manner. However, **Marsh** and **Ethridge** did not explicitly state determining if one version is compatible with another version.

**Northcutt** demonstrated that it was known at the time of invention to synchronize/update two devices (figure 3, column 2, liens 36-42). It would have been obvious to one of ordinary skill in the art at the time of invention to the updating system of **Marsh** in a fiber optic system of **Ethridge** with updating incompatible versions as found in **Northcutt**'s teaching. This implementation would have been obvious because one of ordinary skill in the art would be motivated to provide firmware which can successfully communicate (**Northcutt**: column 1, lines 32-43).

***Response to Arguments***

Applicant's arguments with respect to claims 1-2, 4-6, 8, 11-16 and 20 have been considered but are moot in view of the new ground(s) of rejection. Additionally, it is noted that Applicant's claim language states, "identifying a version of second software installed" and "identifying a version of third software installed". This language reads upon **Marsh** as the cited prior art is involved in upgrading a plurality of networked computer systems. Each system has a software installed, therefore the first system has a first software, the second system has a second software and a third system has a third software. The claim language does make any further distinction. Therefore, the rejections are maintained as indicated.

***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)-272-3736. The examiner can normally be reached 10:00am - 4:00pm Tuesday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock Jr. can be reached on (571)-272-3759. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained form either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR systems, see <http://pair-direct.uspto.gov>. For questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

/William H. Wood/  
William H. Wood  
Primary Examiner, Art Unit 2193  
October 14, 2008